

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 308 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? Yes

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3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

SHIVKRUPA COOPERATIVE HOUSING SOCIETY LTD

Versus

STATE OF GUJARAT

Appearance:

Kum. K.P.Hathi, Advocate, for Shri P.V.Hathi, Advocate, for the Petitioner.

Shri A.G.Uraizee, Assistant Government Pleader, for the Respondents.

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 30/08/96

ORAL JUDGEMENT

Everyone agrees that ameliorative measures have to be adopted for upliftment of the downtrodden and oppressed class. However, when that idea is required to

be translated into action, many hurdles are found to be created in the way. Deeds and doctrines in this regard do not coincide when it comes to implementation of the action for upliftment of the downtrodden and oppressed sections of the society. These conflicts between the preaching and the practice in that regard have come to the forefront in this petition preferred under Articles 226 and 227 of the Constitution of India at the instance of a cooperative housing society consisting of persons belonging to the Scheduled Caste as its members.

2. The facts giving rise to this petition move in a narrow compass. The petitioner is a cooperative society registered under the Gujarat Cooperative Societies Act, 1961. A copy of the certificate of its registration thereunder is at Annexure-A to this petition. All its members are stated to be persons belonging to the Scheduled Caste. The object of the petitioner society was and is to provide housing accommodation to its members. They therefore approached the Additional Collector at Vadodara (respondent No.2 herein) with an application for grant of land in Gotri from the land declared surplus under the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief). A copy of their application together with the annexure thereto is at Annexure-B to this petition. It needs no telling that the avowed object of the Act inter alia is to provide housing accommodation to weaker sections of the society. One mode of providing such housing accommodation is to dispose of the land declared and recovered as surplus thereunder in accordance with Section 23 thereof. It appears that, prior to the application at Annexure-B to this petition, some land vested in the State Government as surplus land under the Act in village Gotri came to be disposed of under Section 23 thereof in favour of one Karmajyot Cooperative Housing Society Ltd. at the rate of Rs.140 per square metre by one order passed on 4th July 1989. Its copy is at Annexure-F to this petition. It does not become clear from the material on record whether or not members of the said society belonged to any Scheduled Caste or Scheduled Tribe. By another order passed on 22nd May 1990, some land vested in the State Government as surplus land under the Act in village Gotri came to be disposed of under Section 23 thereof in favour of the IPCL Employees Cooperative Housing Society Ltd. at Vadodara. Its copy is at Annexure-E to this petition. It is not in dispute that the land allotted by the order at Annexure-E to this petition was at a price of Rs.140 per square metre. By its application at Annexure-B to this petition, the petitioner also requested for allotment of land in Gotri to it for providing housing

accommodation to its members. It appears that the petitioner's application was not favourably considered for quite some time. Thereupon, the petitioner sent one reminder on 2nd March 1993. Its copy is at Annexure-C to this petition. It appears that by one communication of 20th January 1994 the petitioner was called upon to indicate its willingness to get allotment of the land at a price of Rs.500 per square metre. Its copy is at Annexure-G to this petition. The petitioner filed its reply thereto on 16th August 1994. Its copy is at Annexure-H to this petition. It pointed out therein that the price fixed for allotment of land in its favour was quite exorbitant and a reference was made to allotment of land in favour of other societies by the orders at Annexures-E and F to this petition. Thereupon, by the order passed on 21st December 1994, the petitioner's application for allotment of land came to be rejected on the ground that the petitioner did not agree to pay the price of Rs.500 per square metre. Its copy is at Annexure-I to this petition. The aggrieved petitioner has thereupon approached this court by means of this petition under Articles 226 and 227 of the Constitution of India for questioning its correctness.

3. No affidavit-in-reply to this petition has come to be filed by or on behalf of the respondents. Learned Assistant Government Pleader Shri Uraizee for the respondents has informed me that the concerned official from the office of respondent No.2 has remained present with the necessary record of the case. On perusal of record, it becomes clear that substantial time was consumed in processing the application made by the petitioner for allotment of land. After observing certain formalities like calling for further information from the petitioner, the matter was referred to the concerned Town Planning Officer for ascertaining the price of the land which could be allotted to the petitioner. It transpires from the record that the Town Planning Officer fixed the price of the land at Rs.250 per square metre. Even thereafter, the matter could not be taken up for immediate consideration. Learned Assistant Government Pleader Shri Uraizee on instructions has submitted that, since more than two years expired from the date of fixation of the price by the Town Planning Officer, it became necessary to get the price of the land refixed and it was refixed at Rs.400 per square metre by the concerned Town Planning Officer. It has further been stated before me that the matter was thereafter referred to the Committee constituted for the purpose and it fixed the price of the land at Rs.500 per square metre. That is how the communication at

Annexure-G to this petition was sent to the petitioner for ascertaining its willingness to purchase the land at the price of Rs.500 per square metre.

4. Ordinarily, the fixation of market price has to be made as on the date of allotment. However, in the present case, the date of allotment will not have to be taken into consideration for the simple reason that there was inordinate delay in consideration of the petitioner's application.

5. In this connection, a reference deserves to be made to the ruling of this court in the case of ASHUTOSH SARKARI KARMACHARI CO.OP. HOUSING SOCIETY LTD. v. STATE OF GUJARAT reported in 1995 (2) 36 (2) Gujarat Law Reporter at page 1419. I am informed that this ruling has been affirmed in appeal by the Division Bench of this court in Letters Patent Appeal No.733 of 1994 dismissed on 29th December 1994 and also in further appeal before the Apex Court in Special Leave Petition No.4846 of 1995 rejected on 3rd April 1995. In that case, the petitioner society had applied for grant of land for providing houses to its members and the price fixed for the land to be allotted to that society was Rs.800 per square metre. It was found that the price at which the land was allotted to other similarly situated societies around the time the petitioner society in that case made an application was around Rs.450 per square metre. In that context, this court set aside the fixation of price of the land to be allotted to the petitioner society at Rs.800 per square metre and the matter was remanded to the State Government for its fresh decision according to law in the light of the aforesaid reported ruling. The aforesaid ruling is on all fours applicable in the present case.

6. It is not in dispute that the petitioner made its application in July 1990. It is not in dispute that in July 1989 some land in village Gotri was disposed of in favour of one Karmajyot Cooperative Housing Society Ltd. at a price of Rs.140 per square metre by the order at Annexure-F to this petition. It is not in dispute that some land in village Gotri was disposed of in favour of the IPCL Employees Cooperative Housing Society Ltd. at Rs.140 per square metre by the order passed on 22nd May 1990 at Annexure-E to this petition. The petitioner's application was only two months after the date of the order at Annexure-E to this petition. It is not the case of the respondents or either of them that the delay in consideration of the petitioner's application at Annexure-B to this petition was attributable to the

petitioner itself. In that view of the matter, passage of time in consideration of the petitioner's application should not subject it to any disadvantageous position. That was exactly the case in the aforesaid ruling of this court.

7. In view of my aforesaid discussion, I am of the opinion that the fixation of price of the land to be allotted in favour of the petitioner by the communication at Annexure-G to this petition and by the order at Annexure-I to this petition therefore deserves to be quashed and set aside. The matter deserves to be remanded to the State Government (respondent No.1 herein) for fixation of the price of the land afresh in the light of this judgment of mine. It would be desirable to keep in mind that the petitioner society consists of persons belonging to the Scheduled Caste as its members.

8. It may be mentioned at this stage that, as transpiring from perusal of the record of the case, the concerned Town Planning Officer fixed the price of the land to be allotted to the petitioner at the rate of Rs.250 per square metre in November 1990. That price also appears to be somewhat on the higher side in view of the order of allotment made in favour of the IPCL Employees Cooperative Housing Societies Ltd. on 22nd May 1990 at Annexure-E to this petition. Learned Advocate Kum. Hathi for the petitioner states that the petitioner is willing to pay the price of the land at Rs.250 per square metre in terms of its fixation by the concerned Town Planning Officer some time in November 1990. This willingness on the part of the petitioner deserves consideration.

9. In the result, this petition is accepted. The order passed by and on behalf of the State Government (respondent No.1 herein) on 21st December 1994 at Annexure-I to this petition is quashed and set aside. The matter is remanded to respondent No.1 for restoration of the proceeding to file and for its fresh decision according to law in the light of this judgment of mine. Since the petitioner's application is quite old and since the cost of construction has been found rising day in and day out, it would be desirable on the part of respondent No.1 to dispose of the petitioner's application as expeditiously as possible preferably by 31st October 1996. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.

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